IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 56 OF 2005

Rayappa Babaji Dandavade
(deceased through his LRs.)
1-a) Baburao Rayappa Dandavade & ors. ... Appellants.
Versus.
Ashok Mahadeo Salunkhe & ors. ... Respondents.

Ms.Leena Patil i/by Shri P.M.Pradhan for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 16th February, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Appellants.

2. The Appellants are the original Defendants. A suit was filed by the original Plaintiff claiming 1/2 share in the suit well. The said suit was dismissed by the trial Court. The Appellate Court has reversed the decree.

3. The trial Court has held on the basis of the record of the consolidation proceedings that the predecessor-in-title of the original Plaintiff had 8 anna share in the well and that the said right was transferred by a registered sale deed in favour of the original Plaintiff. The Appellate court has also noted that in the deposition the Appellant No.1 has stated that he obstructed the Plaintiff Sonabai from enjoying

the right in the suit well. So far as the right in favour of the Plaintiff Sonabai is concerned, the trial Court has held in favour of the original Plaintiff. The trial Court held that the said right is extinguished by non-use. However, the Appellate Court has held that the right existing in favour of the original Plaintiff Sonabai is not extinguished and there is no evidence led by the Appellants to establish extinguishment of that right. Hence the Appellate Court has proceeded to pass a decree.

4. No substantial question of law arises in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.